

Woorhouse

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221863; B-221863.2 **DATE:** June 20, 1986

MATTER OF: NUS Corporation; The Austin Company

DIGEST:

The Department of Energy (DOE) alternative source selection procedures permitting definitized contract negotiations with only one offeror were improperly utilized to the detriment of the statutory requirement for full and open competition where the protester's technical proposal was ranked so closely with that of the offeror selected for final negotiations that the slight difference in scoring did not necessarily represent a meaningful difference in actual technical merit. Accordingly, the General Accounting Office recommends that DOE reopen discussions with both firms to obtain best and final offers on the basis of definitized contract documents. Second protester, whose proposal, although lowest in cost, was markedly inferior relative to the proposals of its competitors and otherwise only marginally acceptable, is not entitled to the same remedy.

NUS Corporation (NUS) and The Austin Company (Austin) protest the proposed award of a contract to Roy F. Weston Inc. (Weston) under request for proposals (RFP) No. DE-RP01-85-RW00060, issued by the Department of Energy (DOE). The procurement is for technical support services for DOE's Office of Civilian Radioactive Waste Management (OCRWM) and was conducted in accordance with DOE's alternative source selection procedures. NUS and Austin complain that DOE improperly selected only Weston for final contract negotiations after failing to evaluate competing proposals in accordance with the RFP's stated evaluation criteria. We sustain NUS's protest and deny Austin's protest.

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Background

The RFP solicited proposals to provide technical support services to DOE's OCRWM to assist OCRWM in complying with its obligations under the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101-10226 (1982).^{1/} The RFP contemplated the award of a cost-plus-fixed-fee, level-of-effort, task-assignment contract for a two-year base period with three one-year options to provide technical support services in the areas of (1) design engineering and systems integration; (2) facilities siting and licensing; (3) management economy and efficiency; (4) institutional affairs and outreach; and (5) program planning, scheduling and policy.

The RFP called for the submission of technical, cost, and business/management proposals to be evaluated in accordance with the alternative source selection procedures set forth in DOE's "Acquisition Regulations Handbook--Source Evaluation Board" (SEB Handbook) (May 1984). The RFP provided that technical proposals were of greater importance for evaluation purposes than the cost proposals. The business/management proposals were stated to be of significantly less importance than the technical and cost proposals. (Unlike the technical proposals, the cost and business/management proposals were not point-scored.) The stated evaluation criteria for the technical proposals were:

I Personnel Experience

- A. Key Personnel
- B. Support Staff

II Corporate Technical Experience

- A. Experience in Each
Work Area
- B. Technical Support
Services Experience

^{1/} The Act, which established OCRWM within DOE, sets forth a national policy for the permanent disposal of high-level radioactive waste and spent nuclear fuel in underground repositories. Only the first repository is currently authorized, and OCRWM's principal mission during the contemplated contract period will be to determine candidate sites for this first repository, prepare a rationale and justification for site selection, and submit the license application to the Nuclear Regulatory Commission.

III Understanding of the Work

IV Technical Management Plan

- A. Technical Management Control
- B. Technical Management
Coordination Procedures
- C. Technical Management Organization

V Response Capability

The RFP advised that, in terms of relative importance, Criterion I was the most important, Criteria II and IV were of equal importance but less important than Criterion I, Criterion III was slightly less important than Criterion II and IV, and Criterion V was least important. The listed subcriteria were in descending order of importance, except for Subcriteria B and C of Criterion IV, which were equal.

The RFP required that 16 key personnel were to be proposed for the contract, including a Program Director and four Associate Program Directors for (1) Resource Management; (2) Geologic Repositories; (3) Policy, Integration and Outreach; and (4) Storage and Transportation Systems. The RFP also required 145 support staff for the effort, including staff engineers, staff scientists and institutional affairs specialists.

Key personnel would be evaluated in terms of their educational background, related work experience, professional development, and performance record as described in the resumes required to be submitted for each individual. In particular, key personnel would be evaluated on their technical experience in providing technical support services; their experience in the design, construction, and management of large construction and underground projects and nuclear facilities; their experience in the siting and licensing of nuclear waste handling and disposal facilities; and their experience in public relations and outreach activities. The requisite support staff would be evaluated on the basis of submitted resumes with emphasis on educational background, related technical work experience, professional development, and availability to meet the transition plan.

The RFP set forth specific minimum professional and experience requirements for proposed key personnel. For example, the Program Director had to be an engineer with at least 15 years experience in project management, "with significant experience in nuclear waste management and

disposal," and the four Associate Program Directors had to be engineers, scientists, and social scientists with a minimum of 10 years experience in project management, "with significant experience in nuclear waste management and disposal or other aspects of nuclear power." Similarly, the RFP set forth certain basic requirements for the proposed support staff.

The RFP was issued on July 30, 1985, and initial proposals were received from NUS, Austin, and Weston^{2/}. Each offeror proposed various subcontractors as part of a team effort in performing the work. The proposals were evaluated by a Source Evaluation Board (SEB) constituted for the purpose. As the result of the SEB's initial evaluation, NUS' technical proposal received the highest total score.^{3/} Weston's score was slightly lower than NUS' score, and Austin's score was significantly lower than NUS'. Weston's initial proposed cost was the highest. The SEB determined that the business/management proposals submitted by the three firms were acceptable.

The SEB concluded that all three firms were in the competitive range, but also felt that each offer could be improved. Accordingly, written interrogatories were sent to the firms requesting further clarification and amplification in various areas of their proposals, and oral discussions were then conducted with each of the firms. After discussions were concluded, the firms were asked to submit revised technical and cost proposals.

Upon reevaluation, the SEB determined that both NUS and Weston had improved their technical proposals, although Weston made the most significant gain in terms of point scores. In this regard, Weston's total score increased by 14 percent over its initial score, whereas NUS' score increased by only 2 percent. In sharp contrast, Austin's total score upon reevaluation was reduced by 35 percent.

^{2/} Weston is the incumbent contractor under a previous solicitation issued in 1982 for technical services in support of the former National Waste Terminal Storage (NWTs) Program. With the passage of the Nuclear Waste Policy Act of 1982, which became effective before Weston was awarded the contract, DOE's OCRWM replaced the NWTs Program and became the administrator of the Weston contract.

^{3/} Because DOE considers the evaluation scoring to be competition-sensitive, this decision will not set forth the precise scores, but instead will indicate the relative standing of the offerors in more general terms.

All three firms submitted revised cost proposals which reduced their proposed costs, but Weston's cost remained the highest. A cost realism analysis was conducted, and NUS' and Weston's costs were found to be realistic. However, certain understated costs were found to exist in Austin's proposal, and its revised cost was upwardly adjusted for evaluation purposes to reflect cost realism.

As the result of the SEB's reevaluation, Weston became the highest-ranked offeror. NUS' final technical score was 6 percent lower than Weston's score; Austin's technical score was 57 percent lower than Weston's. In terms of final proposed costs, NUS' cost was 6 percent lower than Weston's; Austin's cost (as adjusted for cost realism) was 12 percent lower than Weston's cost.

The SEB then reported its findings to the Source Selection Official (SSO). As reported to the SSO, Weston's proposed key personnel were all rated as good or better with some individuals rated superior, and its proposed support staff was rated as good to superior. The SEB found that the firm demonstrated superior corporate experience, a superior understanding of the work, and a very good organization with a superior response capability. Perceived areas of weakness were Weston's failure to convey an understanding of the task ordering requirement and slowness in implementing effective management practices.

The SEB reported that most of NUS' key personnel were rated good with a few rated superior, and its support staff was rated as good. The SEB found that the firm had very good corporate experience and a good understanding of the work, a very good organization and approach to technical management control, a superior response capability, and a strong commitment to transition. In terms of perceived weaknesses, the SEB reported that several proposed key personnel had deficiencies with regard to "directly relevant waste management experience," that some support staff similarly had limited nuclear waste experience, and that the firm's corporate experience with respect to technical integration was limited.

The SEB reported that Austin's proposal was strong in only two areas: the firm proposed both a well-qualified Associate Program Director for Geologic Repositories and a site very close to OCRWM's headquarters. On the other hand, the SEB noted numerous weaknesses in the proposal. Among other things, the SEB determined that most key personnel lacked adequate nuclear and/or management experience and that the proposed support staff lacked related work

experience. The SEB also found that as a corporation the firm had very limited nuclear and technical support services experience; that its proposed subcontractors had marginal technical experience; that it did not fully comprehend the importance of expertise in underground projects; and that its proposed "pool staffing" organization was not amenable to technical integration.

As a result of the SEB's report, the SSO decided to select only Weston for final contract negotiations. The SSO's rationale for his decision is as follows:

"Recognizing that the two leading firms, Weston and NUS, were ranked closely by the [SEB], with Weston being rated slightly higher, it is my belief that selection of the incumbent would best serve the objectives of the OCRWM Program. Not only does Weston meet the stated RFP criteria better than NUS, but its selection will also mean that the Program will have contractor support that can perform on a high quality basis and at the same time be able to meet near-term critical milestones. While there is a cost differential between Weston and NUS in the latter's favor (approximately \$4.7 million), I believe that this cost differential is more than outweighed by the demonstrated technical competence of Weston, as well as by the aspects of program continuity and momentum, including its sensitivity to institutional issues and its systems integration capability."

Protest Positions

NUS principally contends that the selection of only Weston for final contract negotiations was improper given the close technical ranking between the two proposals as the result of the SEB evaluations. NUS notes that although its technical score was 6 percent lower than Weston's, its revised cost was also lower by the same percentage. NUS asserts that the small difference in technical scores does not reflect any meaningful distinction between the proposals, and, therefore, that the SSO acted unreasonably in determining that Weston's slightly higher technical score offset the firm's higher proposed cost. In essence, NUS urges that the SSO's decision was not an independent finding that Weston's proposal enjoyed a clear technical superiority, but rather was merely a reflection of the scores assigned as the result of the evaluation process. Although

NUS does not expressly challenge the legality of DOE's alternative source selection procedures as set forth in the SEB Handbook, i.e., final contract negotiations with only one firm, NUS urges that DOE did not correctly implement those procedures in the present circumstance where competing proposals were so closely ranked.

Austin joins with NUS in arguing that it was improper for DOE to conduct final contract negotiations with only Weston. Austin notes that its own proposal remained within the competitive range, and also notes that its offered cost was significantly lower than Weston's. Austin contends that its premature exclusion from further award consideration constituted a failure by the SSO to use the best information available in balancing the trade-offs between technical considerations and cost.

NUS and Austin also argue that the selection decision was improper because their proposals were not fairly evaluated in accordance with the RFP's stated criteria. Principally, the firms contend that the SEB placed an undue emphasis upon Weston's performance as the incumbent contractor, and in this regard, conducted a "verification"^{4/} of Weston's key personnel, support staff, and corporate experience that led to an inequitable increase in Weston's technical score. The firm's assert that their scores would have been higher if the SEB had used an equivalent "verification" process for their own proposals.

Analysis

Section 2711(a)(1) of the Competition in Contracting Act of 1984, 41 U.S.C. § 253(a)(1)(A) (Supp. II 1984), sets forth a statutory requirement that executive agencies, in conducting procurements for supplies or services, shall obtain "full and open" competition through the use of competitive procedures, i.e., either sealed bids or competitive proposals (negotiation). The Federal Acquisition Regulation (FAR) mirrors this statutory requirement by providing that the purpose of source selection procedures in competitive negotiated acquisitions is to "maximize competition." FAR, § 15.603(a) (FAC 84-5, Apr. 1, 1985).

^{4/} The RFP required offerors to provide the names and telephone numbers of past supervisors and responsible individuals within client organizations for purposes of conducting reference checks with regard to personnel and corporate experience.

With regard to what may be termed "traditional" competitive negotiation procedures, the FAR provides that contracting agencies shall initially determine which submitted proposals for a particular acquisition are within the competitive range; the competitive range shall be based on cost or price and other factors stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. FAR, § 15.609(a). Except in limited situations, written or oral discussions shall be conducted with all responsible offerors whose proposals are within the competitive range. FAR, § 15.610(b). The principal purpose of such discussions is to advise offerors of deficiencies in their proposals and to give them the opportunity to submit revised proposals that satisfy the government's requirements. FAR, § 15.610(c). Upon the completion of discussions, best and final offers shall be requested from all offerors still within the competitive range. FAR, § 15.611(a). Following evaluation of the best and final offers, the designated source selection authority shall select that source whose best and final offer is most advantageous to the government, considering only price and the other factors included in the solicitation. FAR, § 15.611(d).

However, the FAR also allows agencies to use alternative source selection procedures that limit discussions with offerors during the competition.^{5/} FAR, § 15.613(a) and (b). DOE's alternative source selection procedures are set forth in the SEB Handbook and are authorized by DOE's Acquisition Regulation (DEAR), 48 C.F.R. § 915.613 (1985), "for all negotiated competitive prime acquisitions expected to exceed \$5 million, excepting acquisitions for architect-engineer services, and acquisitions specifically waived by the Procurement Executive." Pertinent to this case, the provisions of the SEB Handbook depart from the "traditional" competitive negotiation procedures delineated in the FAR because they generally permit the conduct of final contract negotiations with only one offeror. Section 501 of the SEB Handbook provides that the SSO, upon presentation of the SEB's report, may decide

"either to select an offer (or offerors) on the basis of the proposals received and evaluated by the [SEB] for final negotiation of a definitive contract(s), or that selection will be made only after completely

^{5/} Alternative source selection procedures were originally developed by the National Aeronautics and Space Administration and the Department of Defense and the rationale for limiting discussions through their use is to prevent technical leveling and technical transfusion. See GTE Sylvania, Inc., B-188272, Nov. 30, 1977, 77-2 CPD ¶ 422.

negotiated, definitive contracts are presented to the SSO for selection of the successful contract(s)."

Section 502 of the SEB Handbook expressly provides that:

". . . . It is generally desirable to select a single offeror for negotiation. However, there may be cases where the SSO may determine, as in the case of fixed price contracts, that it is in the best interests of the Government to select from offers in the form of fully definitized contractual instruments. This also may occur when the SSO has serious questions about the outcome of negotiations, or when the evaluation is so close as to not provide meaningful discrimination among the offerors. The SSO, if considered necessary, may establish or direct the [SEB] to establish a new or revised competitive range and direct that discussions be reopened with all offerors then in the competitive range."

In a recent decision, strongly relied upon by the protesters here, the General Services Administration Board of Contract Appeals (GSBCA) found that DOE's use of its alternative source selection procedures in selecting a single offeror from the competitive range with which to negotiate a contract amounted to a deviation from the FAR's basic requirement for maximized competition because there was more than one proposal remaining within the competitive range. Accordingly, the GSBCA held that the procedures set forth in the SEB Handbook could not be applied to the protested acquisition or any future acquisition contemplated by DOE for general purpose automatic data processing equipment (ADPE) under the Brooks Act (40 U.S.C. § 759 (1982)). CPT Corp., GSBCA No. 8134-P, Sept. 17, 1985, 85-3 BCA ¶ 18,454, reconsidered, GSBCA No. 8134-P-R, Jan. 28, 1986.

Although NUS and Austin argue that CPT is dispositive of the major issue before us, we are not prepared to agree with their position. We note that the GSBCA's holding only reached procurements for off-the-shelf ADPE, whereas the procurement here is for technical support services. However, the case does raise some concern that DOE's regulations, by authorizing alternative source selection procedures for virtually all negotiated procurements over \$5 million, DEAR, \$ 915.613, supra, are perhaps too broad in

extent and should be revised to apply specifically to those kinds of procurements where there is a clear risk of technical leveling or technical transfusion. In any event, we need not decide the relevance of CPT here since the question for resolution is not whether the SEB Handbook procedures legally could be applied in this particular instance, but rather whether they were properly utilized. We find that they were not and that the SSO erred in selecting only Weston, and not NUS as well, for final contract negotiations.

We base our decision upon section 502 of the SEB Handbook, which, as noted above, provides that it is in the best interest of the government to select from offers in the form of definitized contract instruments "when the evaluation is so close as to not provide meaningful discrimination among the offerors." (Emphasis supplied.) We think NUS is correct in urging that its proposal was ranked so closely to Weston's without a clear showing of Weston's superiority that DOE should also enter into final contract negotiations with the firm rather than solely with Weston.

We recognize that the RFP provided that technical considerations outweighed cost considerations, and, therefore, that a 6 percent higher technical score could, in certain instances, reasonably be found to offset a 6 percent higher cost. See Holmes and Narver, Inc., B-206138, Jan. 11, 1983, 83-1 CPD ¶ 27. It is well settled that, in negotiated procurements, cost/technical tradeoffs are usually made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation criteria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Thus, we have upheld awards to higher technically rated offerors with significantly higher proposed costs where it was determined that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. Riggins & Williamson Machine Co. et al., 54 Comp. Gen. 783 (1975), 75-1 CPD ¶ 168. Conversely, we have upheld awards where the agency reasonably determined that the successful offeror's lower costs adequately compensated for the selection of its technically lower ranked proposal. Grey Advertising, Inc., 55 Comp. Gen. 1111, supra.

It is the responsibility of the source selection official to determine whether technical point advantages are worth the cost that might be associated with a higher scored proposal. SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121. Although technical point ratings are useful guides for selection decisions, they should not be overly relied

upon, and whether a given point spread between two competing proposals indicates a significant superiority of one proposal over another depends upon the facts and circumstances of each case. RCA Service Co., B-208871, Aug. 22, 1983, 83-2 CPD ¶ 221. Award should not be based on the difference in technical merit score alone, but should reflect the source selection official's considered judgment of the significance of that difference. 52 Comp. Gen. 358 (1972). In other words, the selection official must determine what a difference in evaluation point scores might mean in terms of performance and what it would cost the government to take advantage of it. RCA Service Co., B-208871, supra.

We think our decision in Holmes and Narver, Inc., B-206138, supra, is illustrative of the source selection official's responsibility to use his independent judgment in determining that a mathematical difference in technical point scores actually reflects a meaningful difference in technical merit. In that case, which similarly involved a DOE solicitation for technical assistance services, the SEB for the procurement recommended to the SSO that the contract be awarded to the offeror with a 6 percent higher technical score instead of the protester despite the 22 percent difference in probable costs. The SSO declined to accept this recommendation without further clarification from the SEB of the importance of the relative technical rankings and whether the scoring difference was of sufficient magnitude to offset the difference in costs. The SEB prepared an addendum to its report which concluded that the technical differences were very significant and that the most probable difference in costs was in the range of 8 to 12 percent, instead of 22 percent as originally indicated. On the basis of this revised report, the SSO selected the higher technically rated offeror for the award.

We concluded that the SSO's selection decision was reasonable in the circumstances, noting that the SSO's statement justifying the selection reflected the considerations which he had weighed in reaching his decision. Of crucial importance, the SSO found that the higher rated proposal was "clearly superior" primarily due to the offeror's excellent technical experience and high quality proposed personnel, the two most important evaluation criteria. Id.

In the present matter, however, we do not believe that the SSO has adequately justified his selection decision. That decision is based on three major considerations: (1) that Weston met the evaluation criteria "better" than

NUS; (2) that Weston's performance will be timely and of high quality; and (3) that Weston's "demonstrated technical competence" outweighs its higher cost.

Although Weston enjoyed a slight scoring advantage over NUS as the result of the SEB's final evaluation, we fail to find that the SSO's use of the adjective "better" constitutes an independent determination that the higher scoring reflected a meaningful distinction between the proposals in terms of actual technical merit. Our examination of the record reveals that Weston's score increased during the final evaluation largely because of the "verification" process conducted by the SEB. Although we need not expressly decide whether this process was equitably conducted^{6/}, it is nonetheless apparent that Weston's scores, notably in the areas of Personnel Experience and Corporate Technical Experience, increased because the current OCRWM managers interviewed by the SEB reported favorably in most instances on Weston's performance as the incumbent.

Generally, a competitive advantage gained through incumbency is not an unfair advantage which must be eliminated, and an agency, therefore, may properly consider a firm's prior performance in evaluating proposals. Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715. However, a numerical scoring advantage based primarily on the advantages of incumbency may not necessarily indicate a significant technical advantage that would warrant paying a substantial cost premium for it. See Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427; Ecology and Environment, Inc., B-209516, Aug. 23, 1983, 83-2 CPD ¶ 229.

In our view, the record here reasonably suggests that the SEB, during its final evaluation, began to equate related technical work experience, a stated evaluation factor, with actual experience under the incumbent contract, an unstated factor. For example, although NUS may have proposed certain individuals that had limited high-level nuclear waste management experience, the SEB report also noted that one-third of Weston's proposed key personnel "have had limited or no nuclear waste management experience

^{6/} The protesters contend that this process was unfair because the SEB contacted OCRWM project managers to obtain current information concerning Weston's experience in performing the incumbent contract, but that the reference checks conducted on their own behalf were much more limited in scope.

except for that acquired at Weston under the current contract" (Emphasis supplied.) Moreover, the SEB reported that NUS' proposed support staff, although generally good in various technical disciplines, had limited experience in the management of high-level waste, "particularly in the DOE program." (Emphasis supplied.) The RFP's terms certainly imply that high-level waste management experience was a critical element of related work experience, but we believe that an undue importance may have been placed upon Weston's own incumbent performance to taint the evaluation results. Since Weston's higher scores upon reevaluation are based largely upon its "verified" experience, those scores are not necessarily a clear indication of the superior technical merit of its proposal to perform the new effort. Thus, the SSO's determination that Weston met the solicitation criteria "better" than NUS is seemingly only a reflection of Weston's prior demonstrated capability, as represented by the increased scores.

The SSO's second major finding that Weston will perform on a high quality basis and in a timely fashion is also, in our view, only another reflection of its incumbent performance. We do not believe this finding provides an adequate basis for source selection because the SEB report did not state that NUS was perceived to be deficient in its ability to deliver high quality work within the project's timeframes, or that NUS' performance would be qualitatively something less than Weston's. Rather, the SEB reported that, "NUS, while rated slightly lower overall than Weston, was rated nearly good or better on all of the above criteria [I, II, and III], and demonstrated very good potential to perform the work."

With regard to the SSO's third finding that Weston's "demonstrated technical competence" outweighed its higher proposed cost, we conclude as well that this is not a sufficient rationale for source selection. Whether the term "demonstrated technical competence" refers to the merit of Weston's submitted proposal or to its incumbent performance is irrelevant, since the record does not establish that NUS was found to be appreciably any less technically competent than Weston. For example, although NUS was evaluated as having limited corporate experience in technical integration, the firm was also rated superior to Weston in technical management control and slightly superior in technical management coordination procedures, proposal areas in which Weston conceivably should have enjoyed a natural advantage as the incumbent. In fact, as noted earlier, the SEB found that Weston was slow in implementing effective management practices. In our view, the SSO's statement as to Weston's

"demonstrated technical competence" was not tantamount to an independent conclusion that Weston was clearly superior to NUS in terms of technical merit, and, therefore, was not a sufficient basis for justifying the cost/technical tradeoff made in Weston's favor. Cf. Holmes and Narver, Inc., B-206138, supra.

In sum, given the very close technical ranking between Weston and NUS, we conclude that the SSO should have acted pursuant to section 502 of the SEB Handbook and have refrained from making his selection decision at that stage of the procurement. We do not accept DOE's position that the negotiation of definitized contracts with NUS and Weston would not provide meaningful discrimination between the offers. Rather, by calling for a reopening of discussions when offers are so closely ranked, both section 502 of the SEB Handbook and section 915.612(e) of the DEAR clearly contemplate that these final contract negotiations will, in fact, produce an ultimate distinction between the offers for selection purposes. Moreover, although the agency's regulations provide that negotiations with the selected offeror are only for the purpose of definitizing a final agreement on price, terms, and conditions, and that no factor which could have had any effect on the selection may be changed, DEAR, § 915.612 (q), we are concerned that final contract negotiations with only Weston may exceed the permitted scope of those negotiations where there is no meaningful difference between the two offers apart from a slightly higher scoring directly related to Weston's "verified" experience as the incumbent.

We reach our conclusion not only in light of the statutory requirement of the Competition in Contracting Act that full and open competition be obtained, but also in light of the critical nature of the services in assisting OCRWM to carry out its mission under the Nuclear Waste Policy Act of 1982. Therefore, in accordance with the agency's own procedures, we are recommending to the Secretary of Energy by separate letter of today that discussions be reopened with both Weston and NUS and that best and final offers be obtained on the basis of fully definitized contract documents executed by the firms.

Having reached this conclusion with regard to the validity of NUS' protest, we must therefore deny Austin's protest. We conclude from our examination of the record that Austin's proposal, in fact, was markedly inferior to the proposals of Weston and NUS. Although Austin was initially included within the competitive range, its technical score, as already indicated, was much lower than

the scores of its competitors. The record shows that its score was downgraded upon evaluation of its revised proposal because the firm did not adequately address DOE's concerns as raised in both the written interrogatories and oral discussions. As the SEB report notes, Austin was rated from poor to no better than acceptable for all criteria except Response Capability, the least important. The SEB determined that the firm's proposed key personnel and support staff had limited technically related work experience, as well as very limited corporate technical experience. The SEB concluded that the firm had demonstrated a limited understanding of the work, "and failed to demonstrate, even after being asked clarifying questions at the orals, that it understood the critical importance of underground engineering to the work." In this regard, Austin continued to propose to obtain assistance in underground engineering from another firm on essentially an "on-call" or consultant basis, whereas it is clear that DOE had implicitly advised the firm that this was not a satisfactory arrangement. Austin's technical management capability was rated as poor, in the SEB's view, reflecting a poor understanding of the work. In particular, the SEB determined that Austin's continued proposed "pool staffing" concept (relying upon unassigned technical staff) was unacceptable in light of the extensive technical integration required for the project.

We have considered the numerous arguments raised by Austin in challenging DOE's conduct of the proposal evaluation process, but we cannot find that there were deficiencies in that process, such as the "verification" of personnel and corporate experience, sufficient to the extent that Austin was competitively prejudiced by them. The firm's proposal remained so significantly inferior relative to the proposals of its competitors after the conclusion of discussions that, under the most favorable view of the matter, Austin no longer had a reasonable chance of receiving the award. See Information Systems & Networks Corp., B-220661, Jan. 13, 1986, 86-1 CPD ¶ 30.

Moreover, the fact that Austin may have offered the lowest proposed cost is irrelevant. In a negotiated procurement, award need not be made to the low offeror unless the RFP so indicates. Norfolk Ship Systems, Inc., B-219404, Sept. 19, 1985, 85-2 CPD ¶ 309. Here, the RFP provided that technical considerations were more important than cost, and we fail to see how Austin's marginally acceptable proposal, despite its significantly lower cost, represented an offer that would prove most advantageous to the government. See Information Systems & Networks Corp., B-220661, supra. Therefore, the provision set forth in

section 502 of the SEB Handbook contemplating definitized contract negotiations with closely-ranked offerors is clearly not applicable in Austin's case.

Accordingly, NUS' protest is sustained and Austin's protest is denied.

for Milton F. Dougan
Comptroller General
of the United States